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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,250	09/09/2003	John R. Scattergood	Scattergood 1	7669

7590 03/06/2006

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EXAMINER

NGUYEN, DINH Q

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 03/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/658,250	Applicant(s) SCATTERGOOD, JOHN R.	
	Examiner Dinh Q. Nguyen	Art Unit 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-9,11-22,24-35,38-40,42-51 and 53-66 is/are pending in the application.
- 4a) Of the above claim(s) 3,7,24-30,34,38 and 55-61 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6,8,9,11-22,31-33,35,39,40,42-51,53,54,62,64 and 65 is/are rejected.
- 7) ☒ Claim(s) 63 and 66 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/12/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of claims 3, 7, 34, and 38 in the reply filed on 12/12/05 is acknowledged. The traversal is on the ground(s) that the elected Species does not exclude the features of these claims. This is not found persuasive because the multiple axes of rotation of claims 3 and 38 is clearly disclosed in figures 21-24, which are of Species X and XI. The source of vibration of claims 7 and 34 is disclosed as reference number 108 of figure 7A, which is not a generic limitation to the elected Species and thus provide a different species when combined with the elected Species of figure 19.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 2, 6, 8, 9, 11-18, 20, 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The amended claim 1 introduce new matter into the disclosure, the added limitation "wherein the containment portion and the unit which accelerates the melt material are operative to prevent the

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melt material from being ejected from the containment portion due to the acceleration force; and wherein, while the melt material is experiencing the acceleration force, liquid droplets of the melt material become entrained in the atomizing fluid flowing across the exposed surface of the material such that at least some of the liquid droplets aerosolize and are ejected from the containment portion” is not supported by the original disclosure.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 32, 33, 35, 39, 40, 42-51, 53, 54, 62, and 66 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 32, 33, 35, 40, 53, 54, 62, and 66, the limitation “entraining liquid droplets of the material” lacks of antecedent basis, the process to atomizing the material is by melting and the step to melt this material is not disclosed in the claims.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 4, 6, 8, 9, 11-18, 20-22, 31-33, 35, 39, 40, 42-49, 51, 53, 54, 62, 64, and 65 are rejected under 35 U.S.C. 102(b) as being anticipated by Roberts et al.

Roberts et al discloses an atomizer system comprising: a melt material 66, a containment portion 69 for securing melted material, a centrifuge unit 70/74 for accelerating the environment of the melted material, atomizing fluid 64 (also acting as cooling fluid) flow across an exposed surface melt material 62 (melted material deposit along the surface 62 as spun off from containment portion 69), the pulley spin shaft 71 on the rotating axis of shaft 71 and pulley 70 spin drum on the rotating axis of drum 62. In figure 1C, Roberts discloses the tip of electrode 16, which acting as the containment portion is the solid form of the melted material. In figure 4, Roberts discloses gas 81 acting as atomizing fluid, gas 81 could be any type of gases such as inert gas or oxidizing gas (see column 8, lines 4-14).

With respect to claims 32, 33, 35-37, 40, 42-49, 51, 52, the apparatus shown by Roberts et al is capable of performing the method or steps recited in the claims.

8. Claims 1, 2, 4, 6, 8, 9, 15, 16-18, 20-22, 32, 33, 35, 39, 40, 46-49, 51, 53, 54, and 64 are rejected under 35 U.S.C. 102(b) as being anticipated by Gow.

Gow discloses an atomizer system comprising: a melt material S, a containment portion 2, a unit 8 that accelerating the melted material with an acceleration force that is higher than the gravitational force such that the melt material does not fall down due to gravity (see figure 3), atomizing fluid W flows across the exposed surface of the melt material (see figure 3).

With respect to claims 32, 33, 35, 39, 40, 46-49, 51, 53, 54 the apparatus shown by Roberts et al is capable of performing the method or steps recited in the claims.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 19, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts et al or Gow in view of Slaughter.

Roberts et al or Gow teaches all the limitations of the claims except for a particulates atomizing fluid. However, Slaughter discloses an atomizer system with melt material 50 and particulates atomizing fluid A flows across an exposed surface 52. Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of Roberts et al or Gow with a particulates atomizing fluid as suggested by Slaughter. Doing so would provide a way to produce better material (see column 2, lines 20-40).

Allowable Subject Matter

11. Claims 63 and 66 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and rejections under 35 U.S.C. 112, 1st and 2nd paragraph, set forth in this office action.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to show the art with respect to an atomizer system: King, Helton et al., Holiday et al., and Anderson et al.

Response to Arguments

13. Applicant's arguments filed 12/12/05 have been fully considered but they are not persuasive. The amended claim 1 added matter that is not supported by the specification.

14. Applicant's arguments with respect to claims 1, 2, 4, 6, 8, 9, 15, 16-18, 20-22, 32, 33, 35, 39, 40, 46-49, 51, 53, 54, and 64 have been considered but are moot in view of the new ground(s) of rejection of Gow.

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

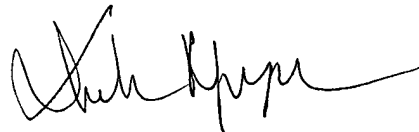
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinh Q. Nguyen whose telephone number is 571-272-4907. The examiner can normally be reached on Monday-Thursday 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Scherbel can be reached on 571-272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dinh Q Nguyen
Primary Examiner
Art Unit 3752

dqn